UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CASE NO. 3:19-cv-2955-X

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AASHISH CHUTTANI, et al.,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP and IMMIGRATION SERVICES, et al.,

Defendants.

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TRANSCRIPT OF THE HEARING

BEFORE THE HONORABLE BRANTLEY STARR

UNITED STATES DIVISION JUDGE

Dallas, Texas

November 17, 2020

9:59 a.m.

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THE COURT: This is Judge Starr. We are on the record in Case No. 3:19-cv-2955. That is Chuttani versus United States Citizenship and Immigration Services. We have got a hearing on the Government's Motion to Dismiss.

So let's go ahead and have appearances, first for the plaintiff.

MR. GITLIN: Good morning, your Honor. This is Jonathan Gitlin on behalf of the Plaintiffs.

THE COURT: Thank you, Mr. Gitlin.

And how about for USCIS?

MS. DELANEY: Good morning, your Honor. This is Assistant United States Attorney Sarah Delaney on behalf of both USCIS and Ken Cuccinelli.

THE COURT: Thank you, Ms. Delaney.

So we are obviously having this hearing by phone. I will give you sort of one request in advance before I turn it over to the Government to argue the Motion to Dismiss. My request is if you are mentioning a case name, if you could give us a citation, to go along with your case name. That is the hardest part of transcribing any hearing, and doing it by phone makes it all the harder.

If you can give us a citation with a case name, that will help us track down what case you are

talking about and keep a clean record.

Ms. Delaney, I will let you go first since it is your motion, and just like in written form, in civil cases, I will let you have the final word as well after we hear from Mr. Gitlin.

So the floor is yours, Ms. Delaney.

MS. DELANEY: Thank you, your Honor.

The Defendants have moved to dismiss this action in its entirety as to the Plaintiff's first claim under the Administrative Procedure Act. The Plaintiffs have not demonstrated that the Defendants have unlawfully withheld or unreasonably delayed the processing of the Plaintiff's form I-526 petition.

And as to the Plaintiffs' second claim for mandamus relief, those are claims that will only be invoked if there are no other adequate remedies available. The Plaintiffs do have other remedies to compel agency action, like a claim under the APA, even when granting such an extraordinary remedy is not appropriate.

I think it is helpful to provide a little background on the EB-5 program, particularly as to the changes to the processing system that went into place at the end of the March, just about the time to Motion to Dismiss was filed.

So the EB-5 program provides visas to aliens who have invested or are in the process of investing in a new commercial enterprise in the United States.

It requires a certain level of investment, and the investment must create full-time employment for at least 10 US citizens and lawfully employ them.

To be classified as an EB-5 investor, the alien must file a form I-526 petition with the USCIS. As part of that petition, the alien must provide documentation to demonstrate each of the numerous components for EB-5 requirements.

That requires documentation and information about the new commercial enterprise, what it is, how it is going to operate, information about the investment itself, documents and information about the legality of the capital invested, documents and information about the job creation, how many jobs, what kind of jobs, et cetera. Information about the engagement of the petitioners in the new commercial enterprise, are they going to be there on a day-to-day basis? Are they setting company-wide policies and procedures? And, additionally, information about whether the

enterprise will be in a targeted employment area, which means there is a lower capital investment required for approval of the petition.

So once we have the set of evidence, all of that information and reviewed all that information, and if the Form I-526 can be approved, the alien can then apply for an EB-5 visa, if they are abroad, or for a change of their status, if they are already in the United States.

But either way, it is pulling from the same allotment of visas for each country for the employment-based fifth preference, the EB-5 classification.

So on March 31st of 2020, the USCIS modified the inventory management process for I-526 petitions. It changed from a first-in/first-out based approach to now prioritize petitions for visas immediately or soon-to-be available. And this new system does apply to the Plaintiffs' I-526 petition.

Specifically, aliens from a handful of countries have historically submitted most of these petitions. And some of these countries are over-subscribed, meaning that a country's use demand exceeds the supply of visa numbers available for allocation in a given classification from the

Department of State.

Additionally, the oldest pending I-526 petitions are also generally from countries that are over-subscribed. As a result, under this new system, visa availability is taken into consideration. So generally workflows are now managed in a first-in and first-out order while also factoring in whether a visa is available or soon-to-be available, and whether the underlying project in which the alien is investing has been reviewed by the Agency.

The change was made to align more closely with the congressional intent of the EB-5 program, and to increase fairness in the program's administration.

Importantly, it also creates a much more dynamic system because the visa availability is assessed monthly, when State updates the visa numbers, which also means the adjudication order is updated frequently as well, taking into account that availability of visas.

On the whole, the new inventory management process has proven very successful. The estimated time range has been decreasing since it was put into place, since the estimated processing time range

uses the data from the most-recently completed cases and it is updated monthly to provide a time range for when USCIS adjudicates 50 percent of the cases, and 93 percent of the cases, so that someone who has a petition pending has a good understanding, based on the latest data, how long the process might take for them.

So, currently, the estimated processing time range is 30 to 49.5 months for all non-Mainland China petitions. So 30 months is the time it takes to complete 60 percent of the cases, and 49.25 months is how long it takes to complete 93 percent of the cases.

As the Court will note, this is a decrease from the time range that was included in the Motion to Dismiss back in April. And at that point, the submitted time range was 31 to 50.5 months. So the fact that there has been a decrease in the time range across the board demonstrates that USCIS is systemically moving through the adjudication process for all of these petitions.

Additionally, the average number of petitions that has been completed each month under this new system has increased. The average number completed between March and August of 2020 is up

43 percent from the number completed between March and August of 2019.

That being said, as of the second quarter of this fiscal year, there are more than 16,500 pending petitions with more than 4,000 new petitions received in this fiscal year alone. It just indicates that there is a large volume of these cases coming in, and while USCIS is working to move through the process and has implemented this new system to try to be more fair, to be more dynamic, there are just still a lot of petitions to be reviewed.

I also wanted to point out -- of course.

THE COURT: Can I ask? One thing I'm wrestling with in this case, I understand your distinction on the mandamus versus the APA claims, in that you believe they never have a mandamus and they only a viable APA claim at the right time, which is unreasonable to weigh. And I'm trying to wrap my mind around the change in processing from first-in/first-out to the new method, and when an unreasonable delay would occur.

I know your argument here is that this is not yet approaching the average time for the adjudication, and so we are not there yet.

Can you help me work through what unreasonable delay would look like for an APA claim under the new system? Are we still talking the averages, you know, as a ballpark in looking at the 31 to 50.5 months? And if we get sort of beyond the 50.5, then we are in the territory of a viable APA claim? Or what is your understanding how the new system interfaces with the APA standard of unreasonable delay?

MS. DELANEY: Yes, your Honor. That would be our position, that the estimated processing time range is really the appropriate data to look at, when determining an unreasonable delay.

Again, the Agency has been working to decrease those numbers. And right now, it is 30 to 49.5 months. And so, if there is a visa available, and if the time range is beyond that, and if the plaintiff demonstrates there is some other explanation as to why the delay is unreasonable, it is not simple -- although the processing time is a significant component of unreasonable delay, there do need to be some additional factors. It is, unfortunately, not a black and white rule in that sense.

THE COURT: Correct.

Understood. I understand that from the appellate case law as well, especially with INS versus Miranda.

Thank you for that clarification, because it is more than just a measurement of time.

MS. DELANEY: Yes, your Honor.

THE COURT: Okay. Well, you answered my question. You can proceed.

MS. DELANEY: Thank you, your Honor.

Now I would like to provide some information as well about the status of the individual Plaintiffs in their petitions. And I would welcome, during Plaintiff's argument, if I have missed any of this information, perhaps there are updates that the Plaintiff might have on these, to please share as well on that.

So, based on the information that the Agency currently has, the first plaintiff, Aashish Chuttani filed a petition in September of 2018. So the petition has been pending for 25.5 months.

Currently, Chuttani is in the United States on H-1B status until May of 2021. And based on the Agency's information as of this time, the Agency estimates that Chuttani's petition will be assigned to an officer for adjudication within the

next 30 days.

The second plaintiff, Suman Siddamreddy, the petition was filed in December of 2018. So it currently has been pending for 23 months. And Siddamreddy has been in the United States on H-1B status until April of 2023.

Bharat Uppalapati, the petition was filed in April of 2019. So it has been pending for 19 months. And Uppalapati is the United States on S-1 status as part of an academic program that runs until June of 2021.

At this time all three do have visas available or soon-to-be available, based on their country of birth.

THE COURT: Ms. Delaney, can I ask you, for Chuttani that will be assigned in the next 30 days based on the current model --

MS. DELANEY: Yes, your Honor.

THE COURT: -- do you know any ballpark estimations of timeline from assignment to an agent to adjudication of the I-526 petition on average?

MS. DELANEY: I don't have that specific number, your Honor. I'm happy to look into that. I do know it is a fairly short turnaround, although I can't, unfortunately, at this time quantify how

short, short may be.

THE COURT: Understood.

MS. DELANEY: Once it is assigned to an officer, it is fairly far along in the process.

THE COURT: And that was my guesstimate. And that is fine. You don't need to chase down an answer and file something supplemental. I was just wondering if you knew off the top of your head.

MR. GITLIN: Your Honor, this is Jonathan Gitlin. Just as a practical matter, in cases like these, and, you know, obviously opposing counsel is free to say anything, just I figured I had a little bit of information that might answer your question.

Typically, when a case like this gets filed, and let's say we make it past this point, typically what happens is opposing counsel, the Government's counsel comes to plaintiff's counsel, and says, Hey, you know, plaintiffs are now being processed, can we abate the case for maybe 30, 60 days? And see if we can get this finished up.

And the whole case becomes moot, and Plaintiff's and Defendant's counsel typically work out a deal for a short amount of time, that within 30 to 60 days the petition -- the EB-5 petition gets processed and the case gets dismissed as moot.

And that has sort of has been my experience and what I have talked to other people about. Take that for what it is worth.

THE COURT: Thank you. Understood.

That is one of the questions in the back of my mind, and I will throw this out there, you know, if I find that there is no mandamus and the APA claim is premature, is there any plaintiff whose posture is far enough along to warrant abating the case versus dismissing without prejudice.

So that is a lingering question in my mind, to the extent either of you can think through that and provide an answer today, that would be helpful.

So, Ms. Delaney, the floor is back to you.

MS. DELANEY: Thank you, your Honor.

I'm looking first at the Plaintiff's APA claim. The defendants agree that the APA does authorize federal courts to compel agency action that has been unlawfully withheld or unreasonably delayed.

But the Plaintiffs have failed to state a claim for relief under the APA. And currently, as another court in this district has explained, much like mandamus relief, compelling Agency action under

the APA is considered an extraordinary measure.

And, your Honor, that is from Alsharqawi versus Gonzales, No. 3:06-cv-1165-N, from the Northern District of Texas, March 14, 2007.

The Agency, looking at those two factors under the ACA, unlawfully withheld and unreasonably delayed, the Agency has unlawfully withheld the required action when it has failed to comply with the statutorily-imposed deadline. But there is no mandatory by which USCIS must adjudicate a I-526 petition.

The Plaintiffs have argued that the aspirational language in 8 U.S.C. 1671 means that the Agency must adjudicate all petitions within 180 days. But as the Fifth Circuit explains in Bian versus Clinton, 605 F.3d 249, Fifth Circuit, 2010, this statute merely expresses Congress's sense of the adjudicative process rather than indicating USCIS has a plainly-prescribed duty to adjudicate applications within a 180-day time frame. Further, the Plaintiff has not pointed to any other statute or regulation that sets a specific timeline for I-526 adjudication.

THE COURT: Ms. Delaney, can I --

MS. DELANEY: Of course, your Honor.

THE COURT: Can I ask what the effect is of a Fifth Circuit case like Bian, where they vacated as moot? Like, what does that mean? Is that persuasive but not binding? Is it nothing? Is it still binding? What is the effect of the Bian case on a court like mine?

MS. DELANEY: Your Honor, our position would be that it would still be binding. It is a little tricky, obviously, because it was vacated as moot. But it was vacated as moot because the application at issue in the District Court case and then in the initial appeal was adjudicated by the time it moved through the appeal process. So the whole situation was moot.

I still think it is definitely persuasive, and we would argue, it is binding. But at a minimum, it is persuasive of an explanation on how the Fifth Circuit does view that language.

THE COURT: Understood. Thank you.

MS. DELANEY: So, again, because there is no statutorily-imposed deadline by which the Agency must adjudicate a I-526 petition, USCIS cannot have unlawfully withheld adjudication.

So looking at the second factor, unreasonable delay, in order to state a valid claim

for unreasonable delay of Agency action, a plaintiff must establish that the defendant had a non-discretionary duty to act, and that the defendant's unreasonably delayed in acting on that duty.

But here there is no indication that the delay has been unreasonable. As we pointed out, the Plaintiff's petitions have been pending for less time than the current estimated processing time range of the 30 to 49.5 months, and the Courts have repeatedly held that processing times by themselves, even if lengthy, cannot support a finding of unreasonable delay.

Courts have considered a variety of factors, like the source of the delay, the complexity of the investigation, the nature and interest prejudiced by the delay, and whether expediting actions would have an adverse effect on other priorities of the Agency.

But the Plaintiffs have not articulated any circumstances in the First Amended Complaint beyond the simple passage of time that demonstrates any such unreasonable delay. They do site general specifics about the number of I-526 petitions that have recently been adjudicated. But they have not

demonstrated how those statistics impact their own petitions, or how that statistics constitute unreasonable delay overall.

And while they also claim that they have provided a unique list of how each plaintiff would be prejudiced by allowing the normal adjudication process to continue, it really seems to boil down to the possibility that they may eventually need to leave the United States, which is always an inherent risk in the immigration process. And at this point would not become an issue until mid-2021, at the earliest, and for one of the Plaintiffs, not until 2023.

As I have noted, USCIS has more than 16,500 petitions pending. And each petition requires a complex investigation into the various EB-5 requirements. Essentially, Plaintiffs have remained in the waiting line because there is a long line of applicants ahead of them.

Allowing Plaintiffs to jump to the front of the line would simply push other petitions back, including many who have been waiting longer. And while Plaintiffs allege that this new visa availability inventory management system already jumps certain petitioners to the front of the line,

it is inaccurate. There are thousands of aliens with pending I-526 petitions that also have visas available or soon-to-be available.

And there is a significant difference between a program-wide inventory management approach that prioritizes certain petitions based on specific factors, and moving three individuals to the front of the line, ahead of anyone else, with these same characteristics.

As a result, the Plaintiffs have failed to demonstrate that USCIS has unreasonably delayed adjudication, and Plaintiffs have failed to state a claim for relief under the case law.

Moving to the Plaintiffs' second claim for mandamus relief, your Honor, as the Court has noted, the Defendants believe that Plaintiffs have failed to demonstrate all three necessary elements for this extraordinary relief.

First, because they don't have a clear right to a mere instant adjudication as they are requesting in the First Amended Complaint because Defendants have not failed to perform a clear duty.

The Defendants have not failed to adjudicate the petitions within a reasonable time. There is no statutory deadline. The petitions are

in the current estimated processing time range, and the principle of the Plaintiffs' principal argument is that they believe the delay has been lengthy, but they really raise only minimal allegations at best as to any other basis for unreasonable delay.

The Plaintiffs have not alleged any facts that would justify their receipt of more favorable treatment than other similarly-situated petitioners by allowing them to jump to the front of the line, which would create an unfair EB-5 system and result in requirements that are unevenly applied to petitioners across the board, and potentially result in a barrage of other litigation, if others also tried to cut ahead in line.

But more importantly, this claims fails because Plaintiffs do have other adequate remedies available for relief. Plaintiffs have other options, like bringing suit under the APA, which they obviously have done; their failure to sufficiently plead their APA claims doesn't mean a remedy doesn't exist, it is just that it is unavailable to them they way they have pleaded it at this time.

And so the courts in the Fifth Circuit have repeated held the same, that mandamus relief is

unavailable in these situations, because the APA authorizes courts to compel Agency action that has been unreasonably delayed. And so mandamus relief is duplicative of the APA relief options. And, therefore, Defendants argue that Plaintiffs have not demonstrated any of the necessary elements for mandamus relief, meaning this claim must be dismissed as well.

Your Honor, those are my arguments. I'm happy to take any questions you might have.

THE COURT: Sure.

The only question that I have that I haven't already asked, I think, it just goes to dismissal with prejudice or without.

If I agreed with you, you know, that mandamus is duplicative, that is a dismissal with prejudice. If I agree with you on our APA arguments, it is a dismissal without prejudice, if it is not.

I mean, the thing that I struggle with is, if it is a dismissal with prejudice, normally that would bind a future adjudication, right? Res judicata or collateral estoppel.

But here it seems like, if there passes a period of time and circumstances indicate an

unreasonable delay, then they should be able to file a suit, and it is viable at that point in time. I wouldn't want any ruling in a case that is perhaps premature to be impacting that subsequent case.

So I'm assuming it is a dismissal without prejudice that we are talking about, but what are your thoughts on that?

MS. DELANEY: Your Honor, at this point we would argue dismissal with prejudice, particularly with the mandamus claim is appropriate.

We also believe, it would also be appropriate as to the APA claims. But I do understand your Honor's concern. And perhaps that is where more a question of abatement versus dismissal comes into play.

At this point there is no indication that there has been an unreasonable -- excuse me -- an unreasonable delay. The process continues to move forward.

Again, Mr. Chuttani's petition will be before an officer for adjudication likely within the next 30 days. So there is every indication that this process does continue to move forward for the Plaintiffs.

As a result, we would think it is

appropriate to dismiss with prejudice. But, obviously, we would defer to whatever your Honor thinks is appropriate.

THE COURT: Understood.

And one reason I'm wrestling with this is you brought up your arguments as both under jurisdictional grounds and merits grounds. And so ordinarily if I were to dismiss something for lack of jurisdiction, say, in this case, if it is not yet ripened, then I couldn't say that I had reached the merits of the issue. I would have to say that I hadn't reached the merits of the issue, so the dismissal would be without prejudice.

So I think if I agree with your jurisdictional argument, it would be without prejudice. If I use that argument instead as being a 12b6 failure to state a claim argument, I think it would be a dismissal with prejudice.

So that is just what I'm wrestling with in my mind. I know these are intricate things that that judges figure out the last word in a ruling, so you don't need to get bogged down with that.

But, Mr. Gitlin, I would like to hear your thoughts as well on with prejudice or without, if it is jurisdiction, if it is the merits.

So, I guess, the floor is yours, Mr. Gitlin, to respond how you wish, knowing what the questions are that are troubling me at the moment.

MR. GITLIN: Sure.

Your Honor, why don't I go ahead and answer your immediate question, and then I can get into my argument.

As we laid out, your Honor, in our objection, any dismissal on jurisdictional grounds, I believe it is the Fifth Circuit, and I have cited it in my objection, must be without prejudice.

Because, just as you said, if it is a dismissal for lack of jurisdiction, then this court, by definition, doesn't have jurisdiction to adjudicate the merits, and a dismissal with prejudice would act as an adjudication with the merits.

So if you would give me just a second, that is, I believe, in my objection, which is Document No. 16, Paragraph No. 9, and it is going to be Footnote No. 2, it looks like.

And it says, "Where both 12b1 and 12b6 grounds for dismissal have merit, the Court should dismiss only on the jurisdictional grounds. This permits the Court, without jurisdiction, from

prematurely dismissing a case with prejudice, and thereby allows the plaintiff to pursue their claim in a court that does have proper jurisdiction."

And that cites to a Northern District case, Tovar v. US Healthworks. It is from February 3rd of this year, so I will give you the case number; it doesn't have a citation yet. It is going to be 3:19-cv-803-M-BK.

And that case is citing to a Fifth Circuit case called Hitt, H-I-T-T, v. City of Pasadena. And the citation for that is 561 F.2d 606.

THE COURT: Excellent. I have got those down, and while phone hearings are generally horrible and problematic, they do make it much easier to find our cases. So I do have it pulled up. So, thank you, Mr. Gitlin.

MR. GITLIN: Okay. Your Honor, my -- my response is going to be walking through my Amended Complaint. So if the Court wanted to pull that up to follow along, that is going to be Document No. 11 in this case.

And then there are just a couple of things I wanted to preface with.

Defendant's counsel cited a bunch of stats and numbers, and et cetera, et cetera. And made

allegations about the facts, and as I have laid out in my objection, this Court is prohibited from any -- from considering any of that.

Per the Fifth Circuit, the Court must consider only what is in my Complaint, and the documents referenced in my Complaint. And none of those things that Plaintiffs -- oh, sorry -- Defendants counsel is citing are in my Complaint. And, in fact, they contradict with some of the numbers in my Complaint.

And in order to resolve that, that would obviously be a factual question that would go to trial. So for the purpose of the Motion to Dismiss, the Court must limit itself to what is in the Complaint.

Now, if at trial they want to come forward and argue, well, those aren't the real numbers that we published on our website, these are the correct ones, then that is obviously a fact question that is resolved at trial.

But for here, for the low bar to see if I even pled a claim of relief, then the Court must take only my facts.

And so why don't we start with the jurisdictional argument, 12b1, and if the Court

would start at paragraph 6 on our -- it is going to be page 2, paragraph 6 in our Amended Complaint. As the Court sees in 6, 7, and 8, we have pled that each of the Plaintiffs is a natural person and a citizen of India.

And as opposing counsel detailed, this case deals with immigration petitions filed by each of the Plaintiffs seeking a visa based on the EB-5 category of federal immigration law.

The Court can move to the next page, paragraph 16, "in order to obtain a EB-5 visa, an alien must file a form I-526 petition with USCIS." And then the next paragraph, 17, "Pursuant to 5 U.S.C. Section 555, USCIS must adjudicate an EB-5 petition within a reasonable amount of time."

Now, over and over during Defendant's argument you heard opposing counsel say, well, there is no statutory deadlines, so we can't have ever blown a deadline. But that is just wrong.

There is a deadline, and it is statutory. And it is non-discretionary. It is, "The USCIS must adjudicate any petition before it within a reasonable amount of time."

So that is the deadline.

Moving on, if we jump to page 6, and start

with Paragraph 33, and, your Honor, I can just summarize this.

I believe defense counsel gave the numbers correctly, the dates correctly. All three of my clients, all three Plaintiffs submitted an EB-5 petition in September of -- and I'm on paragraph 35 on page 6 -- on September of 2018. USCIS acknowledged receipt of that petition.

Paragraph 37, as of the filing of this Complaint, USCIS has neither adjudicated the Plaintiffs' petition nor issued a Request for Evidence, what we refer to an RFE, with respect to that petition.

And the allegations are similar. I won't take the Court through each one, for the two other Plaintiffs, Suman Siddamreddy and Bharat Uppalapati.

I would like to jump ahead to page 10, and these are our claims. As I just covered, USCIS has a statutory non-discretionary duty under 5 U.S.C. Section 555(b) to adjudicate EB-5 petitions within a reasonable amount of time.

Our claims are all essentially requesting an order from this Court, and the one finding that is the delay has been unreasonable. And, number two, ordering USCIS to adjudicate our petitions.

And so let's start with our first claim on page 10. Claim 1, 5 U.S.C. 706. 5 U.S.C. 706 gives a private right, a statutory right to adjudication by a court. Five U.S.C. 706 says -- well, here, let me back up. Five U.S.C. 702 says a person suffering a wrong because of Agency action or inaction is entitled to judicial review of that action.

Well, that is what we are alleging. So if you go to 5 U.S.C. 706, it says "the reviewing court shall compel Agency action unlawfully withheld or unreasonably delayed."

And our allegation is that the Agency action has been unreasonably delayed. So we pled a federal civil statutory claim under 5 U.S.C. 706. The same thing with Claim 2 on the following page, Mandamus Act, 28 U.S.C. 1361.

We have pled that USC -- I'm on paragraph 72. USCIS has a non-discretionary duty to adjudicate each of Plaintiffs' petitions within a reasonable amount of time and USCIS has failed to perform that duty.

Further, Plaintiffs -- all right. Continuing, suffering ongoing harm.

So we have pled to declaratory -- sorry. We believe -- while we believe that sufficient

relief is available to us under our first claim under the APA, the Administrative Procedure Act. As a fallback position, we have also pleaded for mandamus relief as well. And it is akin to state law, right?

So under Texas law, for example, if I file a breach of contract suit, I always plead in the alternative. I say breach of contract, and I say in the alternative, if some technical legal failure comes in, and I can't get my breach of contract claim, which is a legal claim, then I also plead for quantum meruit, which is an equitable claim, or promissory estoppel, which is also an equitable claim, et cetera, et cetera, et cetera.

Again, as we said in our objection, we believe that our remedy does come from the APA, from 5 U.S.C. 706.

But, in the alternative, we should be allowed to -- we have pled a Mandamus Act claim as well, because if for some technical reason, the legal claim under the APA fails, then we have got an equitable claim for mandamus.

And, again, that is under federal civil law as stated right there. So all of our claims -- And then we have got other various miscellaneous

claims like declaratory relief under 28 U.S.C. 2201 and 02, and for attorneys fees under the Equal Justice Act.

So all of these are civil claims under federal statutory law. If the Court will turn back to the very first page in our Amended Complaint, under paragraph 1, Jurisdiction and Venue, we cover this. We say, look, our claims arise under the APA, in paragraph 1, APA at 5 U.S.C. 701, et cetera, and the Mandamus Act located at 28 U.S.C. 1361.

Paragraph 2. Further, Plaintiffs are seeking declaratory relief 28 U.S.C. 2201 and 02; injunctive relief under 5 U.S.C 701, and Mandamus relief as described under 28 U.S.C. 1361.

All of these are federal civil claims that arise under statutory federal law.

So, accordingly -- and I'm in Paragraph 3 -- this Court has jurisdiction pursuant to 28 U.S.C. 1331, because all of these claims are civil claims. This is a civil action arising under the laws of the United States.

Thus, this Court has jurisdiction under 1331, and also under 28 U.S.C. 1361, because this is an action in the nature of a mandamus to compel an officer or employee of the United States or any

agency thereof to perform a duty.

And the duty we are saying is, Hey, USCIS has a statutory, non-discretionary duty, which is reinforced both by statute and case law, you know, case after case after case. It is statutory. It is non-discretionary. And it is a duty to adjudicate these petitions within a reasonable amount of time. That is their deadline.

Opposing counsel kept saying, there is no deadline, but there is. It is a reasonable amount of time.

THE COURT: So can I ask you, can I ask you a question? About how the reasonable deadline plays into harm and ripeness of the injury?

Let's take a hypo and say -- and this is purely fictitious, right? Because no one gets a H-B1 visa for 20 years. But let's assume that one of your clients got an H-B1 for 20 years.

Would you have a ripe claim after 120 days, when they know they won't have an entry for another 20 years? I'm trying to figure out the ripeness with respect to not just your case, but each of your three clients, right? And Chuttani is certainly the closest to having a concrete injury.

It seems like Siddamreddy is the hardest,

but how do we factor in -- I recognize that there is a deadline of reasonableness in the statute. I'm trying to square that with the notion of standing, and under the APA, does it presume -- is there a like a per se standing, a per se harm under the APA any time you have action that is unreasonably delayed or unlawfully withheld?

MR. GITLIN: Absolutely.

THE COURT: Are you presuming the APA such that you don't need to have a ripened injury?

MR. GITLIN: Absolutely.

Your Honor, the ripened injury is the unreasonable delay. The case law, the case law across the country, including multiple cases in this District, in the Northern District of Texas, both Judge Godbey and Judge Boyle have addressed this issue.

And I will be getting to those cases and citing them. In fact, both I and opposing counsel cited those particular cases.

So each -- each of the Plaintiffs has a private statutory right of action such that -- and that is under 702 and 706, such that the moment the Government, such as the moment that the USCIS fails to reasonably -- sorry -- to adjudicate their

petition within a reasonable amount of time, they have an injury, and a private right of action under 706 to bring that right of action, to bring a claim, and that they are harmed the moment that USCIS does not adjudicate their petition within a reasonable amount of time.

So the answer to your question is yes. The claims are ripe the moment USCIS does not adjudicate their claim -- their petition within a reasonable amount of time.

THE COURT: Understood.

MR. GITLIN: And so, your Honor, I think, and I think that segues nicely into the next part of 12b6 visa.

I think we have shown that statutorily this Court has jurisdiction. In fact, as I mentioned, multiple courts -- several in this district and another recent one, I believe, within the last year, in the Western District of Texas, found the same.

Let me give you the site. It was cited in our -- hold on. It was cited in our objection, if I can jump just a little bit. Here we go.

Judge Boyle in Elmalky v. Upchurch. And this is -- I can give you both the case number and

the WestLaw cite. The case number is 3:06-cv-2359-B.

That is the case number. I was able to look it up on Pacer with that. But here is the WestLaw cite. It is going to be 2007 WL 944330. And that is the Northern District of Texas, March 28th, 2007.

And let me give you the other one, Judge Godbey's case. It is Ahmadi v. Chertoff, and this one does have a cite. It is 522 F.Supp. 2d 816, NDTX 2007. I cited Ahmadi v. Chertoff in my objection, and defense counsel cited Elmalky v. Upchurch in their -- I can't remember if it was in their original motion or in their reply, but in one of them.

This case mirrors both of those cases, like, just very, very closely. They weren't EB-5 petitions, but they were both -- let me see -- in Ahmadi, it was an I-485 application, and in Elmalky, it was an I-765 application, I believe. Sorry. It was also an I-485 application.

And in both cases, USCIS, the Government came back and filed pretty much the exact same thing, 12b1, 12b6. And in both cases, in Judge Godbey's case and in Judge Boyle's case, they both

said, no, we have got jurisdiction because there is a private right -- I'm sorry -- USCIS is a statutory non-discretionary duty to adjudicate within a reasonable amount of time. And the APA gives a private right to compel adjudication when it -- when it has been an unreasonable amount of time. And on top of that, this Court has jurisdiction under 1331, because those are civil claims arising under federal law.

So they -- they easily found that the courts had jurisdiction, and then the same thing with the Western District case from 2019 that we cited, M.J.L. versus McAleenan, and I can give you -- again, that one is unpublished because it is kind of recent. I can give you the case number. It is A-19-cv-00477-LY.

Let me find where I was.

So I think it bears talking about M.J.L. just briefly, the Western District case from November 13th, 2019.

In that case, the Plaintiffs had each submitted an immigration petition to USCIS, which USCIS had sat on and not adjudicated.

When the Plaintiffs filed suit in that case, they alleged that USCIS had not adjudicated

their petitions within a reasonable amount of time, and brought the same claims we have here, a request to compel an adjudication under the APA, and in the alternative, a request for mandamus.

Just like in this case, USCIS filed a Motion to Dismiss, based on both 12b1 and 12b6, and the Court finding it had jurisdiction stated explicitly, "The APA provides that a person suffering legal wrong because of Agency action or inaction, which is under the statute, or adversely affected thereby by Agency action with the meaning of the statute is entitled, there is a personal right to judicial review thereof."

So, in answer to your question, that is the personal right, and that is where the ripeness comes in. And that the APA requires agencies to conclude matters within a reasonable time, and authorizes the federal court to compel agency action unlawfully withheld or unreasonably delayed.

So I will skip. And the cases go -- it hits all of the points. It is exactly what we are finding today, and the Court easily -- easily found jurisdiction.

So the same thing with Ahmadi v. Chertoff and Elmalky v. Upchurch, both, again, from this

district, from district courts in this district.

So at this point, I think I will move ahead to 12b6, the failure to state a claim.

So, as I have mentioned multiple times, under 5 U.S.C. Section 555(b) defendants have a non-discretionary statutory duty to adjudicate each of my clients' claims within a reasonable amount of time.

We have also covered the basis of our claims. It is our allegation that defendants haven't, that they have breached their duty by not adjudicating this in time.

That obviously means that the key question for the 12b6 is, you know, have -- have defendants -- have we pled sufficient facts to state a claim that the Defendants have unreasonably delayed the processing of our -- my clients' petitions?

So, as the case law establishes, this is a question of fact. And it depends on, to a great extent, on the facts of the particular case. That is covered in a number of cases that I cited and included, the Almaki v. Upchurch case and the others.

I won't go into all of the cites unless

the Courts wants, but I'm happy to provide them. But I think at this point it bears looking at our petition, because this is the crux of their complaint -- their objection -- I'm sorry -- their motion.

It bears looking at our complaint to see what we have pleaded. If the Court would look at, in our Amended Complaint, page 3. We will start on page 3, paragraph 18.

As we show in paragraph 18, it says, "Pursuant to 8 U.S.C. 1572(b), the processing of an immigrant benefit application should be completed not later than 180 days after the filing of the application."

That is the sense of Congress.

Now, this is something that you and opposing counsel discussed a little bit about the bindingness of the Fifth Circuit case. And, your Honor, I think it is moot whether the Fifth Circuit case is binding or not. Here is what I will say.

The case law does seem to establish that this is not a hard and fast deadline, but that is not what we are pleading. We are not saying that it has got to be done within 180 days, but simultaneously, you don't throw this out of the

window. It matters. The case law establishes this is one of the factors that you look at, you look at what Congress says how long it should take. And Congress says here in 1571, it is the sense of Congress that it should be six months, 180 days.

So, again, that matters. That goes into the determination of what is reasonable.

All right. Let's turn to page 4, paragraphs 19 and 20. Pursuant to -- and we have pled that the fact that pursuant to 8 U.S.C. 1573(a), the law requires that the Attorney General shall -- it is mandatory -- take such measures to reduce the backlog of EB-5 petitions with the objective of total elimination.

And with respect to an EB-5 petition, a backlog means any period of time in excess of 180 days.

So here we have a separate statutory provision that is saying, Hey, look, it has been over 180 days, that is no bueno, that is no good, right?

But, again, we are not saying that this is a hard and fast, it has got to be 180 days, but, again, simultaneously, you don't throw these facts out the window, I mean, not you, but you in the

broad sense. Sorry.

Pardon me if it sounds like I'm lecturing the Court. I absolutely did not have that intention. I apologize.

THE COURT: I didn't take that way.

MR. GITLIN: Okay. Thank you, your Honor.

But, again, we have got multiple statutory provisions that show what the timeline, what Congress thinks the timeline should be.

All right. Let's move ahead to paragraph 24.

As of the filing of our Complaint, USCIS currently states that its standard average processing time for an EB-5 petition is 12.3 months.

And, again, you heard Plaintiff -- you heard defense counsel represent, well, our current time is this and our current time is that. No. This Court, for the first of 12b6, this Court cannot consider that.

The Fifth Circuit is clear, the Court has to consider only the facts in my petition.

Now, as I state, and as I cite on Footnote 8, the numbers that I have got are straight from USCIS. They are the stats that USCIS is publishing.

Now, defense counsel wants to come in and

say, well, look, we have got these other numbers here that are really the real numbers, not those ones we are publishing on our website. Well, if they want to try to do that at trial, that is their prerogative. But for the purposes of 12b6, the Court has to consider only the numbers I'm putting forth.

And, again, I will give you the citations, the Court can go look -- and I will tell the Court, I went and checked the numbers. And the average processing time has gone up between -- when we filed the case, at the time we filed the case, it was 12.3 months. It is now 14.1. They have added another two months on the average processing time.

So let's think about that.

If the average processing time -- fine, let's take their 14.1 months. If their average processing time is 14.1 months for an EB-5 petitions, my clients are still -- the shortest amount of time the client, I think, it is -- you mentioned Mr. Sidamreddy. I will tell you. No, Mr. Uppalapati. That is still one year -- sorry. That is still almost one and a half times what the average processing time is.

Again, is it dispositive? No. But -- but

it is humongously -- it is a big fact.

Hold on.

The length of -- here, I'm sorry. I have got it right here.

So let's go over the three Plaintiffs, just briefly. Let's take Chuttani. As of this hearing, it has been almost two years and two months since USCIS acknowledged receipt of Mr. Chuttani's petition, which means that is two times the average processing time reported by USCIS for EB-5 petitions, and well over four times the 180-day timeline set out by Congress.

That sounds unreasonable to me.

Okay. Mr. Siddamreddy, it has been almost two years. It has been one year and 11 months since USCIS acknowledged receipt of his petition, which is just about two times the average -- the published average processing time reported by USCIS, and almost four times -- 3.12 times the 180-day timeline set up by Congress.

The same thing with Mr. Uppalapati. It has been over a year and a half, which is coming up 1.5 times the published average processing time and over three and a quarter times the 180-day timeline set up by Congress.

So those are the facts that we have pled.

Moving on page 4, paragraph 25. This is where I cover that USCIS has dropped drastically their -- their -- the number of petitions it processes ever year. I won't go into every single thing, but per their own reported data, USCIS -- back in 2018, USCIS was adjudicating 15,000 plus petitions a year.

By the end of the year, in 2018, USCIS -- in fact, because of that, by the end of the year, they only had 14,000 and change of petitions pending.

In 2019, that number dropped by over 10,000 petitions a year. It just plummeted. That is a drop of approximately 7 percent.

Put it another way in 2019, USCIS processed less than one third of the number that it had been processing in years prior.

So, again, this is all by USCIS' numbers, and there is no explanation as to why, or if they have given no rule of reason, or anything. It is a massive drop in oncoming petitions.

And so -- I'm sorry -- I'm sorry -- this drop in processing is also despite a massive drop in incoming petitions. And I'm on paragraph 27 here.

And the Court does not have to dig through this here, I will summarize.

Back in 2015 and 2016, USCIS was receiving approximately 14,000 petitions per year. In 2018 and 2019, however, that number dropped to only 6,000 and change and 4,000 and change, respectively.

They are getting a fraction coming in. So they can't claim that somehow, well, we are processing far fewer now, 10,000 less a year now, less than one third than what we used to because we are overwhelmed with incoming petitions.

No, the numbers are going down drastically. So that is a drop of over 70 percent in incoming petitions in the span of approximately three years.

All right. Given -- and instead of speeding up adjudication, or getting rid of the backlog, which Congress has said, look, you need to get rid of the backlog; they just said, no, we are going to put the brakes on and they have given no reason why.

So -- and, look, the math is straightforward. If USCIS was current -- and as opposing counsel said, they have only got about a 6,000 backlog right now. So the math is straight

forward. If USCIS is currently processing petitions at the rate it was in 2018, they would be done. Would there be any left? No. Probably not, it would be virtually eliminated.

So why aren't they? And they have given no explanation. None.

That seems unreasonable.

All right. Page 5, paragraph 29, all right. So let's talk about the new prioritization process. And I appreciate opposing counsel bringing this up. And she said, we qualify, we are -- for each of the Plaintiffs, they are current and qualify for a visa, their prioritization date is here. So they qualify.

So under USCIS's new prioritization, they ought to be moved to the front of the line. So they complain, well, maybe, it would be skipping them to the front of the line, but they have set up the process to skip them to the front of the line and here we are.

So, and page 69, and the Court doesn't need to look at this, we listed each of unique prejudices including one of my clients, who has children who are United States citizens, who may not get here to stay here in the country with his kids.

So, as we covered, USCIS has not issued a decision nor an RFE, request for evidence, on any pf them.

So, as the Court can see, we pleaded extensive facts that USCIS' delay in processing petitions is unreasonable. And per the Fifth Circuit, for the purposes of the 12b6, the Court has to accept all of our facts as true, viewing them in the light most favorable to us.

So considering that we have pleaded that each of the Plaintiffs has filed a petition, you know, between a year and a half to almost two and a quarter years ago, the number shows a dramatic drop in petitions with no explanation of the petitions adjudicated by USCIS, with no explanation as to why, despite the number of incoming petitions dropping as well, that each of my clients qualifies for prioritization, that USCIS has not adjudicated any of our petitions, and the length of time that they have taken has blown way past Congress' statutory timeline and USCIS's own published average processing times, sometimes up to two times their published average processing times.

Look, per the Supreme Court, all we have to do to clear the bar for 12b6 is plead factual

content. That allows the Court to draw the reasonable inference that USCIS has not processed our petitions, or has unreasonably delayed our petitions, processing our petitions.

Given all of the facts -- it is a very low bar. Given all of the facts that we have pleaded, we have certain pleaded sufficient facts to merely "draw the reasonable inference" that USCIS has unreasonably delayed its processing.

Now, here is the thing, I think the vast majority of Defendant's motion and argument seems to be that, look, it hasn't been unreasonable upon trial of this case and they win. That is their argument. Their argument is basically a final argument, a closing argument on trial.

But that is not where we are at. We are at the 12b6 stage. All we have to do is plead facts for a reasonable inference, and we have certainly met that bar.

And, otherwise -- and then here is the thing, given all that we have pleaded, if the Court were to find otherwise, then the Court would be creating case law that established that USCIS has, as a matter of law, not unreasonably delayed the processing of our petitions, despite all of the

facts that we covered.

And were this Court to do, it would be in contradiction to numerous other courts across the country, which I have cited in our objection, including multiple district courts in this district which have found that we have cleared the bar.

And, again, I go back to Judge Godbey in Ahmadi v. Chertoff, and Judge Boyle in Elmalky v. Upchurch. They were faced with pretty much the exact same set of claims, and the exact same motion to dismiss. And they found, number one, the Court had jurisdiction; and, number two, the claims pleaded met past the low 12b6 bar.

But even if all of the foregoing weren't persuasive, an examination of the law applied to this shows that we do meet it. Because, for the purpose of the APA, it is complicated, and the determination of whether an agency has reasonably delayed action is a complicated and nuanced task that requires a fact intensive inquiry.

And just the mere hand waiving of allegations by USCIS, that, look, it is within the standard processing times. That doesn't cut it. That doesn't get us booted on 12b6.

Now, maybe they win at trial, but it

doesn't get us booted on 12b6.

And the courts across the country use something called a track test, with six factors. And we have met each of the six factors. We have pleaded sufficient facts to meet each of the six factors. And if we have done that, then that is a fact question. And that gets us above 12b6.

So, for example, the time agencies take to make decisions must be governed by a rule of reason. As we have covered, they haven't provided -- USCIS has not provided any rule of reason.

Well, that factor cuts against them.

Number two, where Congress has moved a timetable or other indication of speed or expects the Agency to proceed.

Well, Congress has provided a timetable or an indication of what it thinks the speed should be, 180 days. Well, they have blown four times past that. In fact, USCIS has provided a length of time that it says is average; 12.3 months, or if we want to round it up to today, 14.1 months. But they have blown way past that, too, in some cases, 1.5 to two times.

All right. I won't belabor the point. USCIS -- and, therefore, whether there are higher

priorities. USCIS hasn't listed any higher priorities or provided evidence of it.

Number five, the Court should also take the time -- here, let me jump ahead to number six.

The Court may not find any impropriety lurking behind the Agency's lassitude.

But here is the thing, while we don't have any explicit evidence of impropriety right now, the scuttling of the numbers that I went over, how they dropped it to us, a third of what it used be, despite the drop of incoming, that stinks.

Without making any sort of political statement, and I'm not getting involved here in that, but it is no secret that the current administration has been explicit about its disfavor with respect to even legal immigration.

And, in fact, since the filing of this case, I have had other cases -- I had a case up in DC, the District Court in the District of Columbia, and with respect to an H-1B immigration. And it was the same sort of thing, it was an APA claim, the exact same claim. And we found there was -- we got up there, we got ahold -- there was a -- a quote, unquote guidance memoranda that had been issued to the USCIS inside. And we litigated it, and it was

found by -- it was a sister case, where we were litigating ours at the same time, so it kind of adjudicated, a sister case, and I can give the Court the cite. IP Serve Alliance v. United States Citizenship and Immigration Services, Case No. 18-cv-02350. And this is up in the District Court in the District of Columbia.

USCIS was found to be propagating illegal memoranda, like breaking the law against -- it was -- it was -- it was guidance policies that were designed to scuttle legal immigration.

There is a whiff of impropriety throughout USCIS right now. And they already have been found to have been breaking the law on legal immigration. So, again, this is the sort of thing that factors in. It is not that far of a stretch, but if they are doing it with H-1B visas, they are doing it with EB-5 visas.

So, given all of the foregoing, we have met all of the track factors. So, again, we don't have to win the case here, all we have got to do is get over the hump of 12b6. And if we have pled enough facts to meet each of the factors, we get over the hump.

And, finally, I think, even if all of that

weren't enough, the Court should deny the Defendant's motion to allow us to conduct discovery, as courts across the country do.

When we have got this sort of situation, what the Courts say is trying to adjudicate the track factors, which, again, is a nuanced and fact-intensive determination, at the 12b6 stage is improper.

So what courts have been doing, including the M.J.L. court in the Western District of Texas is saying, look, this is premature, the dismissal of this case is premature. Let's let the plaintiff engage in some discovery to see if they can get the remaining track factors, which we will need. I mean, USCIS is the one holding the information on this. So that is what we will need to do.

And they have said, they have denied the 12b6 motions for that. And if this Court would be doing differently, it would going against courts across country, including districts in Texas, and in, I believe, in this district -- I don't know if they added track factors in this. Courts across the country are saying, huh-huh, this is premature at the 12b6 stage, plaintiffs get to engage in discovery.

If the Defendants want to come back at an MSJ, at a later stage, that is fine. But this case, this case stays alive.

All right. Let's see. Let me cut that out. I'm almost done.

Oh. As for mandamus, again, we have covered this briefly, and I won't belabor the point, but our mandamus claim is like a contract case where we keep -- where we have as an alternative, a promissory estoppel, or a quantum meruit claim.

We believe other remedies exists under the APA. However, should the requirements of our APA claim fails for some technical reason, thus denying us relief under the law, then we should have an equitable claim to give us the relief we are looking for.

And surviving a 12b6 case -- sorry -- a mandamus claim survives the 12b6 under these circumstances by a case in this district.

Again, I'm going to refer the Court back to Judge Boyle's Elmalky case, where, again, the same thing, they pled for APA and they pled for mandamus, and the Government brought a 12b6, and on their mandamus claim arguing the same thing. And Judge Boyle said no, it stays alive.

At this time, right? It is not like the Court can't dismiss it later, if the Court doesn't think. But at this time, it survives 12b6.

So I would like to close, your Honor, with this, just as a practical matter. That goes to something that you asked about earlier. You said, you know, what happens?

And I will tell you that in my experience, I have filed a number of these cases, both EB-5, H-1B, I have filed multiple types of petitions. And I will tell you what pretty much always happens.

I file a case. The Government comes back and files some sort of non-answer pleading, a motion, a 12b6, a 12b1, you know, something that delays their time to answer.

And then once we get over that hump, you know, the Government typically comes to me afterward, their attorney calls me up and says, Hey, look, you know, coincidentally, magically, all of a sudden, the thing that you are complaining about, I think we can get this solved really quickly, and says, we need 30 days, we need 60 days, whatever it is. We work out a deal, and we abate the case.

And then magically, everything that we are complaining of gets taken care of, the case gets

adjudicated, or if it is a denial, it gets reversed, or whatever it was. And then we abate the case, and then, you know, 30, 60 days later we file a mootness, and the entire case gets dismissed.

I have never taken one of these to trial. Ever. And it has always been pretty much the exact same thing. And everybody I have talked to has said the same thing. That, you know, there is dilatory motion at first. Once you get past that, once you get over it, the case gets adjudicated -- you know, magically, the thing that the Plaintiffs are complaining about, the Government comes up, and says, well, it looks like your place in line all of a sudden just magically came up for all of your Plaintiffs. It gets solved; the case goes away.

So this is not unusual. And I have never had a case dismissed on these grounds, and I have never had -- I have never had it for jurisdiction, I have never had is dismissed for 12b6, and the case law backs it up in courts across the country, including in this district.

So if the Court has any questions, I would love to answer them.

THE COURT: I think you have covered them all, Mr. Gitlin. So I will turn it over to Ms.

Delaney again for the final word.

MS. DELANEY: Thank you, your Honor. I would just like to make a few brief points.

Listening to the Plaintiffs' counsel describe the case, he pointed out a lot of information about the general statistics for adjudication of Form I-526 petitions, about cases in this district and in the Western District, where much longer delays of periods of time. Ahmadi was a four-year delay, Almaki, a three-year delay, and M.J.L. v. McAleenan was nearly a three-year delay plus a regulation issue.

Plaintiffs' counsel has also pointed to -- I would argue, spurious allegations that are not correct about the D.C. cases.

At the end of the day, Plaintiffs have not demonstrated the specific harm that is going to affect them, if the normal adjudicative process for Form I-526 petitions continues, within the United States lawfully, until at least the middle of 2021.

One of the petitions is expected to be assigned to an officer for adjudication within the next 30 days. The timeline is moving forward.

The Court can also take judicial notice of the public records for USCIS. And that is where all

of the information I described, your Honor, comes from. It is not secret sources. It is all information publicly available and posted on USCIS at its website.

It also addresses the Rule of Completeness, addressing information in the Plaintiffs' Amended Complaint, to point out some of the additional and more accurate specifics that the Court should consider as part of the whole picture when evaluating Defendant's Motion to Dismiss.

Crucially, I would like to point one of issues that the Plaintiffs' counsel kept addressing was the historical average number, the historical average period of time for processing petitions.

It is correct that as of right now, for the first three quarters of this fiscal year, it is 14.1 months. But it is important to look at the historical average for fiscal year 2018, which was 22.2 months. And the historical average for fiscal year 2019, which was 19.8 months. And all of the Plaintiffs' petitions are within that ballpark right now.

But also the historical average processing time is calculated using a very different methodology that doesn't use the actual data from

the actual completions of petitions right now. And that information is an estimated processing time range, which is on the USCIS website. It is addressed in both our Motion to Dismiss and in our Reply. And right now it is 30 to 49.5 months period of time.

So, critically, it is also important, USCIS is focused on creating a fair system where the same rules apply to all petitioners across the board. There are, again, some considerations for visa availability, some considerations for whether the underlying project itself, from which the investor is investing, has been approved already by the Agency.

But the critical factor is that these same requirements are applied to all petitioners across the board. Plaintiffs here have not shown how they would be harmed by the current system or why they deserve extraordinary relief as opposed to others similarly situated. They have failed to plead a claim under the APA and they have failed to show jurisdiction under either the APA or for Mandamus relief.

As a result, your Honor, we believe it is appropriate to dismiss the case at this point.

THE COURT: All righty.

Well, thank you for the argument. I appreciate counsel for both sides being very well prepared and helping me work through the Motion to Dismiss, so I have got my work cut out of me.

I will start working through the motion in written form, and then y'all will see that order and we will proceed based on what that ruling is.

MS. DELANEY: Thank you, your Honor.

MR. GITLIN: Thank you, your Honor.

THE COURT: Thank you. Court is adjourned. Y'all have a good day.

MR. GITLIN: Thank you.

(Proceedings concluded at 11:46 a.m.)

C E R T I F I C A T E

I, Kelli Ann Willis, CSR/CRR, certify that the foregoing is a transcript from the record of the proceedings in the foregoing entitled matter.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

This 9th day of November 2020.

s/ Kelli Ann Willis
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